

FEBRUARY 12, 2009 PRESENTATION TO  
THE BROOKHAVEN NATIONAL LABORATORY'S COMMUNITY ADVISORY COUNCIL  
SYNOPSIS OF QUESTIONS AND ANSWERS

- Q: Is there a penalty for not attaining the one-year award term incentive?
  - A: Yes. Using the Princeton RFP as the most recent example, if the contractor does not attain three one-year extensions within the first five years of the contract, its contract will end after the five years plus any award term earned.
- Q: Since the RFP has not been released, what is the timeline for the selection process?
  - A: Release of the RFP is tentatively scheduled for the second quarter of 2009. Since the RFP has not been drafted or released, any of my comments regarding the RFP are based upon the contents and experiences with prior RFPs.
- Q: Were there any changes at the five Office of Science Laboratories that have gone through the competition process?
  - A: New limited liability corporations (LLCs) were put in place at the Fermi National Accelerator Lab and the Argonne National Laboratory.
- Q: What are the financial incentives for someone to bid on this contract?
  - A: The financial incentive would be the annual fee, which is currently \$7.4 million dollars per year. The fee available under the new contract has not been determined, but the maximum fee available will be included in the RFP when it is released.
- Q: Is the fee a fixed fee or a performance fee?
  - A: It is a performance fee that the contractor can earn based upon performance criteria that will be in the contract. It is not a guaranteed fixed fee.
- Q: What is the cost to put together a proposal in response to the RFP, where does the money come from, what is the number of man hours involved, and does this drain resources?
  - A: The cost is hard to estimate. The money comes from the corporations, not the Laboratory. It is not going to be a reimbursable expense under the contract. Contractors have stated that even though the process was "painful" and costly, the process was worth it. It forces a review of what is being done and the way it's done.
- Q: Is maintaining and sustaining the Community Advisory Council (CAC) a part of the contract?
  - A: No, it is not. It will be up to whoever wins the contract to decide how to handle that issue.
- Q: Why can't the CAC be part of the requirements in the RFP?
  - A: The CAC supports the contractor and the Lab Director, not the Department of Energy (DOE). Making it a DOE requirement under the RFP would bring it close to being a Federal requirement and raise a Federal Advisory Committee Act (FACA) issue. The CAC, as currently structured and operated, is not governed by FACA. While any contractor under the new contract would likely want to continue the CAC, it can't be made a mandatory requirement. This is an issue that will be further discussed within DOE before the RFP is released.
- Q: Are there any pre-qualification requirements of the RFP?
  - A: It will be an open competition. The criteria for selection will be on the website explaining how competitors will be evaluated. Past performance and experience will likely

- be part of any evaluation. For an organization that is not qualified based upon the evaluation criteria, to compete for this contract would be a waste of its money.
- Q: Is there a requirement that suggestions sent to DOE will be responded to promptly by DOE or the Office of Science?
    - A: They will be responded to and, if important, they will be looked into right away. The goal is to put out the best product possible.
  - Q: Have there been any criticisms of the fact that there could be more turn-over than necessary due to the need for contract competition?
    - A: No. Contractors usually find this to be a beneficial process.
  - Q: What lessons have been learned to avoid disruptions (e.g. layoffs, retirement benefits, etc.) that resulted from the 1997 competition?
    - A: One of the things that has been asked for from offerors and evaluated is a detailed transition plan. If an incumbent wins, there would probably be very little change. Within prior RFPs, the incumbent employees were given a right of first refusal to continue working for whoever wins the contract, except for senior management personnel specified in the RFP.
  - Q: What about lay-offs?
    - A: To my knowledge, there had not been any resulting from the last couple of contract competitions.
  - Q: Does the Source Evaluation Board (SEB) make a recommendation based upon individual evaluations or do they make their evaluations and send them to the Source Selection Official?
    - A: The SEB is typically comprised of scientific and technical experts from the Office of Science and also includes legal, finance, contracting, and human resource personnel. Some are voting members, others are non-voting members or advisors. They help to prepare the RFP and evaluate the proposals received in response to the RFP. Once the proposals come in, the SEB reviews each one individually against the evaluation criteria that are in the RFP. The proposals are not evaluated by comparing them against each other. The SEB submits a report to the Source Selection Official.
  - Q: Is the Source Selection Official one person? And who is that person?
    - A: Yes, the Source Selection Official is one person, typically a senior-level person from the Office of Science. The identity of that person is not posted.
  - Q: What if there is a tie?
    - A: I have never seen a tie. There is always a way to distinguish between proposals in order to get to an award.
  - Q: Is there a minimum number of responses hoped for or anticipated?
    - A: There is no magic number. One or more will do.
  - Q: Is there an appeal process after award?
    - A: Yes. The unsuccessful offerors are given a post-award debriefing showing the weaknesses and strengths of their proposals. They can file a protest with the agency, the Government Accountability Office or the U.S. Court of Federal Claims.
  - Q: Is cost an evaluation factor for the SEB to consider?
    - A: Yes, but it has not been as big a factor as the technical and management criteria. The cost evaluation and its relative importance will be addressed in the RFP.
  - Q: Are there any non-DOE people on the SEB?
    - A: The SEB is made up of agency personnel.
  - Q: Who can give input to the RFP?

- A: Anyone. If someone submits a comment, it will receive a response.
- Q: How many people are on the SEB?
  - A: Typically about a dozen, but not all are voting members. Some are advisors and some are specialists.
- Q: Does the SEB reach consensus on the scores?
  - A: Yes. The SEB members will individually score a proposal first and then will get together to discuss and reach consensus ratings for each individual offeror.
- Q: Has a Source Selection Official ever selected a contractor that was not the top recommendation of the SEB?
  - A: The SEB does not always make a recommendation to the Source Selection Official. The SEB did not make a recommendation in the last couple of competitions I participated in as counsel. On competitions where a recommendation is made, the Source Selection Official has the ability to disregard what the SEB recommends. I have seen that happen in competitions I worked on while I was with the Department of the Navy. The Source Selection Official, however, still has to be able to justify the selection based upon the evaluation criteria in the RFP.
- Q: What if no one can meet the criteria?
  - A: There is a right to cancel the RFP and then re-solicit. The RFP requirements would likely be re-examined and modified appropriately before it went back out. It is possible to “out spec” yourself and you want to avoid that.
- Q: What is the mechanism for providing comments on the process?
  - A: The RFP web page provides a name, e-mail address, and phone number of an individual designated to receive comments.
- Q: Why weren’t all of the people who expressed interest not listed on the web page?
  - A: DOE has to have permission before it can list the people.
- Q: Does the RFP include a draft contract or is the contract negotiated after a selection is made?
  - A: Typically the proposal that is submitted in response to the RFP can be counter-signed by DOE and that will form the contract. It is accepted as is and is signed. In some situations, a “conformed” contract, based upon the proposal submitted, will be put together and signed by the parties with the selection announcement.
- Q: Has the process been successful in the past?
  - A: Yes. The Office of Science has successfully completed five competitions in about as many years, without protest.